

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD GOSZTYLA,

Plaintiff,

v.

FRENCH, et al.,

Defendants.

No. 2:21-cv-1403-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint to (ECF No. 1), he has filed an application to proceed in forma pauperis (ECF No. 2).

Application to Proceed In Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
3 relief.” *Id.* § 1915A(b).

4 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
5 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
6 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
7 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
8 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
9 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
10 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
11 U.S. 662, 679 (2009).

12 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
13 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
14 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
15 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
16 678.

17 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
18 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
19 content that allows the court to draw the reasonable inference that the defendant is liable for the
20 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
21 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
22 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
23 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

24 Screening Order

25 Plaintiff alleges that Officers French, Pfeifer, and Burnette applied or condoned the use of
26 excessive force when they arrested plaintiff on March 3, 2018. ECF No. 1 at 5. Plaintiff will be
27 permitted to proceed with his excessive force claims against these three defendants.

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1 Plaintiff further alleges that Sheriff Scott Jones and Ashley Moore denied him due process
2 and retaliated against him by refusing to provide plaintiff “with reports and all other legal
3 documents he is entitled to under law in order to prosecute this case and prove his claims against
4 the defendants.” *Id.* at 6. A wrongful denial of a public records request, however, does not
5 violate plaintiff’s constitutional rights. *See Houchins v. KQED, Inc.*, 438 U.S. 1 (1978) (“Neither
6 the First Amendment nor the Fourteenth Amendment mandates a right of access to government
7 information or sources of information within the government’s control.”). The exclusive remedy
8 for a denial of a proper California Public Records Act request “is to file a writ of mandamus in
9 state court and money damages are not an available remedy.” *Brooks v. Vallejo City Unified Sch.*
10 *Dist.*, No. 2:12-cv-1466-GEB-EFB, 2013 U.S. Dist. LEXIS 33455 at *12 (E.D. Cal. Mar. 11,
11 2013) (citing Cal. Gov’t Code §§ 6258, 6259(d)). As for a First Amendment retaliation claim,
12 plaintiff fails to show that either defendant was aware of plaintiff’s protected conduct or that their
13 denial of his records request was *because of* his protected conduct. Generally speaking, a
14 retaliation claim cannot rest on the logical fallacy of *post hoc, ergo propter hoc*, literally, “after
15 this, therefore because of this.” *See Huskey v. City of San Jose*, 204 F.3d 893, 899 (9th Cir.
16 2000). Plaintiff may choose to clarify this claim in an amended complaint.

17 Last, plaintiff claims that “[a]fter being driven from Napa Valley to the Sacramento
18 Sheriff’s Department, [he] was denied medical care” in violation of the Eighth Amendment. ECF
19 No. 1 at 7. Defendant Lamb purportedly told plaintiff, who was bleeding, that he would receive
20 medical care after they “spoke about his crime.” *Id.* Plaintiff claims he did not receive medical
21 care for 48 hours. *Id.* Lamb’s alleged failure to immediately summon medical care, however,
22 does not constitute deliberate indifference in violation of the Eighth Amendment unless plaintiff
23 can show that Lamb’s conduct led to further injury. *See Hallett v. Morgan*, 296 F.3d 732, 746
24 (9th Cir. 2002). Plaintiff may attempt to cure this defect in any amended complaint. Further,
25 should plaintiff choose to amend, he should also specify what serious medical needs he presented
26 to Lamb and who was responsible for the 48-hour delay in treatment. *See Wilhelm v. Rotman*,
27 680 F.3d 1113, 1122 (9th Cir. 2012).

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1 For these reasons, plaintiff may either proceed only on the potentially cognizable
2 excessive force claims against defendants French, Pfeifer, and Burnette or he may amend his
3 complaint to attempt to cure the complaint's deficiencies. Plaintiff is not obligated to amend his
4 complaint.

Leave to Amend

6 Plaintiff may file an amended complaint to attempt to cure the deficiencies noted above.
7 Any amended complaint must identify as a defendant only persons who personally participated in
8 a substantial way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d
9 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if
10 he does an act, participates in another's act or omits to perform an act he is legally required to do
11 that causes the alleged deprivation). Plaintiff is not obligated to file an amended complaint.

12 Plaintiff may not change the nature of this suit by alleging new, unrelated claims in the
13 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

14 Any amended complaint must be written or typed so that it so that it is complete in itself
15 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
16 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
17 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
18 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter
19 being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
20 1967)).

21 The court cautions plaintiff that failure to comply with the Federal Rules of Civil
22 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.
23 See E.D. Cal. L.R. 110.

Conclusion

25 || Accordingly, it is ORDERED that:

26 1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is granted.

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2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
3. in accordance with the notice to the California Department of Corrections and
4. Rehabilitation filed concurrently herewith.
5. Plaintiff's complaint alleges, for screening purposes, potentially cognizable
6. excessive force claims against defendants French, Pfeifer, and Burnette.
7. All other claims, including those against defendants Jones, Moore, and Lamb, are
8. dismissed with leave to amend within 30 days from the date of service of this
9. order. Plaintiff is not obligated to amend his complaint.
10. Within thirty days plaintiff shall return the notice below advising the court whether
11. he elects to proceed with the cognizable claim or file an amended complaint. If
12. the former option is selected and returned, the court will enter an order directing
13. service at that time;
14. Failure to comply with any part of this this order may result in dismissal of this
15. action.

Dated: November 8, 2021.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD GOSZTYLA,

No. 2:21-cv-1403-EFB P

Plaintiff,

NOTICE

V.

FRENCH, et al.,

Defendants.

In accordance with the court's Screening Order, plaintiff hereby elects to:

(1) _____ proceed only with the excessive force claims against defendants French, _____, and Burnette;

OR

(2) delay serving any defendant and file an amended complaint.

Plaintiff

Dated: